

Supro Neon Corporation and International Brotherhood of Electrical Workers, Local 1968, AFL-CIO. Case 2-CA-26549

September 30, 1996

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On February 7, 1996, Administrative Law Judge James F. Morton issued the attached decision.¹ The Respondent filed exceptions and a supporting brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Supro Neon Corporation, Yonkers, New York, its officers, agents, successors, and assigns, shall pay to the Local 1968 International Brotherhood of Electrical Workers Health and Benefit Fund \$8420.28 on behalf of Paul Siebert, plus any additional amounts that accrue on those amounts to the date of payment as computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

¹ On July 14, 1994, the Board issued a Decision and Order (314 NLRB 382) in which it found, in agreement with the judge, that the Respondent, Supro Neon Corporation, violated Sec. 8(a)(5) and (1) by failing to execute a collective-bargaining agreement and a settlement agreement in which accord had been reached. The Board ordered the Respondent to sign the agreements and make the employees whole for all losses incurred by the Respondent's failure to sign the agreements. By consent judgment, the United States Court of Appeals for the Second Circuit enforced the decision on January 9, 1995. *NLRB v. Supro Neon Corp.*, No. 94-4221 (1/9/95). Thereafter, on May 31, 1995, the Regional Director for Region 2 issued a compliance specification and notice of hearing, subsequently amended at the hearing held December 18, 1995, which indicated, inter alia, that the Respondent owed \$8,420.28, plus interest, in contributions to the Union's Health and Benefit Fund.

² We find no merit in the Respondent's apparent contention that the administrative law judge exhibited bias and prejudice against the Respondent in the compliance hearing because he had presided over the underlying unfair labor practice proceeding. We have carefully examined the record and the judge's decision and find no evidence that the judge prejudged the issues, made prejudicial rulings, or demonstrated bias against the Respondent.

Nancy K. Reibstein, Esq., for the General Counsel.
Stuart Kirshenbaum, Esq., of Hewlett, New York, for the Respondent.

Vincent F. O'Hara, Esq. (Holm, Krisel & O'Hara), of New York City, New York, for the Charging Party.

DECISION

JAMES F. MORTON, Administrative Law Judge. I held the hearing in this case in Brooklyn, New York, on December 18, 1995, to determine whether Supro Neon Corporation (the Respondent) has complied with the Board's Order to make contributions to the Local 1968-International Brotherhood of Electrical Workers Health and Benefit Fund (the Fund) on behalf of a discriminatee, Peter Siebert. The compliance specification, as amended at the hearing, seeks contributions totalling \$8,420.28 to the Fund, plus interest, on his behalf. The Respondent's answer does not deny that it was obligated to make such contributions.

On the entire record and after considering the briefs filed by counsel for the General Counsel and for the Respondent, I make the following findings of fact and conclusions of law.

The pleadings establish that contributions totalling \$8,420.28 were to be made by the Respondent to the Fund on Siebert's behalf. The Respondent, in its answer and in its position as stated at the hearing, avers that it made excess contributions to a Local 1968 Pension Fund on behalf of Siebert and asserts that it intends to make application to that Pension Fund for a refund of the excess in order to apply the amount to Siebert's account with the Fund. Based on that representation, it requested, in essence, that further proceedings be stayed. The request is denied. These proceedings were held to establish the extent of the Respondent's liability. It is obligated to pay contributions mounting to \$8,420.28 to the Fund. In its brief, the Respondent has argued, in effect, that the Board's order, requiring the Respondent to make the above contributions, is a windfall to Siebert. I am without authority to vacate the Order and, in any event, would not recommend its being vacated, as the Respondent has offered no valid basis to do so.

No documents or other evidence were presented to establish any loss, other than \$8,420.28, attributable to the unlawful withholding action on the Respondent's part. I thus find that no additional sum is due under *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

Based on the record as a whole, I issue the following recommended¹

ORDER

The Respondent, Supro Neon Corporation, Yonkers, New York, its officers, agents, successors, and assigns, shall pay to the Local 1968 International Brotherhood of Electrical Workers Health and Benefit Fund \$8420.28 on behalf of Peter Siebert.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.